



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 23-01287
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Adrienne M. Driskill, Esquire, Department Counsel

For Applicant:
Christopher Snowden, Esq.

06/14/2024

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant mitigated security concerns under Adjudicative Guideline F (Financial Considerations). Based upon a review of Applicant’s testimony and the documentary evidence, national security eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on December 4, 2020. On October 5, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Adjudicative Guideline (AG) F. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

Program (January 2, 1992), as amended (Directive); and the National Security AG effective within DoD after June 8, 2017.

Applicant answered the SOR in an undated response (Answer). He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Applicant subsequently retained an attorney, who submitted a Notice of Representation. Department Counsel amended the SOR on March 22, 2024, and noted that she was prepared to proceed the same day. The SOR amendment added five additional allegations to the SOR (SOR Amendment). Applicant responded to the SOR Amendment on April 16, 2024. The case was assigned to me on March 25, 2024. DOHA issued a Notice of Microsoft Teams Video Teleconference Hearing on April 16, 2024. The case was heard on May 16, 2024, as scheduled.

The Government presented nine documents marked as Government Exhibits (GE) 1 through 9. Applicant testified on his own behalf and offered 33 documents, which were marked as Applicant Exhibit (AE) A through GG. I kept the record open until May 31, 2024, to give Applicant the opportunity to supplement the record. He timely submitted seven documents, which I marked as AE HH through NN. I admitted all of the parties' exhibits without objection. DOHA received the transcript of the hearing (Tr.) on May 23, 2024. (Tr. at 10,15.)

Findings of Fact

Applicant is 42 years old. He has married twice and divorced once, in 2005. He remarried in 2006 and has two minor children. Applicant's second wife has an adult child from a prior marriage. Applicant enlisted in the Army in 2000 and served on active duty for eight years. He received a medical discharge in 2008 and was permanently retired as a sergeant in August 2013. His discharge was characterized as Honorable. He deployed overseas in war zones in 2002-2003 and 2006-2007. He has a VA disability rating of 50%. One of his disabilities has been diagnosed as PTSD for conditions related to his deployments. Applicant received a CIS Certificate in 2009, a bachelor's degree in 2011, and a master's degree in 2014. He was employed as a U.S. Government civil servant from 2008 to 2010. Since 2010, he has worked for DoD contractors as an engineer. He began working for his current employer in January 2022. (Tr. at 12, 16-25; GE 1 at 7,11-12, 13-18, 21-22, 24; AE B; AE C.)

Applicant has held a security clearance since 2001, shortly after he enlisted. In 2008 his clearance was suspended due to his self-report that he was experiencing financial difficulties. In January 2022, Applicant was able to maintain his clearance, pending the outcome of the current adjudication, as he began his employment with his current employer. (Tr at 11-13; GE 1 at 25-27.)

The SOR, as amended, sets forth five allegations of Federal tax delinquencies totaling about \$34,000, spanning tax years (TY) from 2018 to 2022; and nine consumer debts totaling about \$57,000. Applicant has also sought bankruptcy protection on two

occasions. In the Answer and his response to the SOR Amendment, he admitted all of the allegations “with clarification.” The specific allegations in the SOR and the SOR Amendment are as follows:

1.a. 2019 Chapter 13 Bankruptcy Payment-Plan Petition. Applicant and his wife filed a Chapter 13 Bankruptcy petition in October 2019 at a time when he had a tax delinquency for TY 2018 and a number of delinquent consumer debts. As part of the proceeding, Applicant took an online financial counseling course. As of October 2023, Applicant’s monthly payment to the bankruptcy trustee to fund his repayments to his creditors, including the Internal Revenue Service was \$1,913. Although the Trustee was successful paying off some of his debts and paying down others, Applicant failed to make several payments pursuant to the plan. He paid a total of \$63,000 to the Trustee and had a total delinquency of payments to the Trustee of about \$30,000. In October 2023, the Trustee moved to dismiss the proceeding. After speaking with advisors including his bankruptcy attorney, Applicant developed an alternative plan to resolve his debts outside the procedures of a Chapter 13 bankruptcy plan. He was able to refinance his house with a larger loan and borrow against the increased equity in his residence. On January 25, 2024, the bankruptcy court ordered the dismissal of the Chapter 13 case at Applicant’s request. He then pursued his mortgage refinance plan, which was successful. As discussed below, Applicant has resolved all of his tax and consumer debts except one, SOR ¶ 1.h, which he hopes to settle in the coming weeks. (Tr. at 32-36, 88, 98, 103; GE 4; AE A; AE K; AE L; AE Z.)

1.b. 2009 Chapter 7 Bankruptcy Discharge Petition. Applicant and his wife discharged in bankruptcy about \$150,000 of debts accrued by the two of them separately before they married in 2006. He was unable to pay his debts because he was underemployed following his medical discharge from the Army in 2008. His wife suffered from a serious medical condition that kept her from being employed. She remains unemployed today due to her poor health. (Tr. at 24-25, 37-40, 86-87, 97; GE 5 at 24; AE A.)

1.c. through 1.g. Federal Tax Delinquencies. As of the date of the SOR. Applicant owed Federal taxes in the following tax years: 1.c. \$1,677 (2018); 1.d. \$11,208 (2019); 1.e. \$8,877 (2020); 1.f. \$9,495 (2021); and 1.g. \$2,814 (2022). In early 2024 Applicant entered into a short-term payment plan with the IRS to pay \$37,406 within 180 days. On April 3, 2024, he paid all of his tax delinquencies, plus accrued interest and penalties. (Tr. at 40-41; GE 2 at 29-39; AE E; AE Q at 4-14.)

1.h. through 1.p Consumer Debt Delinquencies.

1.h. Credit Union 1 Account Charged Off and in Collection (\$14,173). Shortly before the hearing, Applicant received an account validation letter he requested. He intends to negotiate a settlement of this debt and resolve the debt with funds from his savings account. (Tr. at 44-48; GE 7 at 2; GE 8 at 2; GE 9 at 4.)

1.i. Credit Union 2 Account Charged Off (\$13,171). Applicant resolved this debt with a payment of \$6,500 on May 6, 2024. (Tr. at 48-50; GE 7 at 2; GE 8 at 3; GE 9 at 4; AE W at 2.)

1.j. Credit Union 3 Account Charged Off (\$9,468). This debt was resolved in the 2019 bankruptcy proceeding. (Tr. at 51-52; GE 7 at 3; GE 8 at 2.)

1.k. Credit Union 2 Account Charged Off (\$6,270). Applicant resolved this debt with a payment of \$3,200 on May 6, 2024. (Tr. at 48-50; GE 7 at 3; GE 8 at 3; GE 9 at 4; AE W at 1.)

1.l. Bank Credit Account in Collection (\$1,149.) Applicant resolved this debt with a payment on May 7, 2024. (Tr. at 53; GE 6 at 3; AE R at 76-78; AE Y at 1.)

1.m. Loan Account Charged Off (\$6,079). Applicant resolved this debt with a payment of \$2,426 on April 16, 2024. (Tr. at 53-54; GE 6 at 4; AE R at 32-35; AE X at 1.)

1.n. Retail Credit Account Charged Off (\$603). Applicant resolved this debt with a payment of \$199 on or about April 18, 2024. (Tr. at 55; AE T.)

1.o. Bank Account Charged Off (\$4,258). Applicant resolved this debt with a payment of \$2,204 on or about April 17, 2024. (Tr. at 56; AE S.)

1.p. Retail Credit Account Charged Off (\$2,180). Applicant resolved this debt with a payment of \$800 on April 8, 2024. (Tr. at 57-58; AE CC.)

Applicant's income has increased dramatically over the years. Early in his post-Army life, he was trying to support a family of five with an annual salary of \$60,000 to \$70,000. In 2018, his salary increased to about \$100,000 and more recently, his salary has increased to about \$150,000. He currently earns about \$166,000. He also receives about \$1,300 each month for his VA pension. The VA payment is not taxed. (Tr. at 58-62, 81, 101.)

Applicant has for a long time incurred significant expenses paying for the medical care and prescriptions for his second wife. He has also had expenses related to his teenage child who has disabilities. During the 2014 to 2016 period, Applicant and his family lived in a rental home with a monthly rent of about \$2,800. He began to experience financial difficulties after he purchased a home for his family in May 2016 for \$623,000 with a mortgage in the amount of \$613,937. In November 2016, he refinanced the home loan in the amount of \$637,100. Both loans were VA mortgage loans. The monthly payment on this second loan was \$3,696. He found that he was incurring new debt to be able to pay his existing debt. He used the metaphors of "robbing Peter to pay Paul" and "the snowball effect." He was in serious financial trouble. (Tr. at 34-35, 48-49, 53, 70, 85-86, 98-99; GE 1 at 9; GE 9 at 8, 14.)

Applicant was late in making a number of payments on this loan and the mortgage lender agreed to work with Applicant during this period of hardship by restructuring the loan to reduce the monthly payment to \$3,200. His interest rate was 3.5 percent. The lender put aside \$140,000 of the principle of the loan into a separate non-interest bearing account. Applicant was not required to pay anything on this portion of the loan. In 2020 or 2021 and again in 2022 or 2023, Applicant reduced his Federal Tax withholding so that he could afford to pay his living expenses. (Tr. at 61-72, 99-100.)

Before filing his Chapter 13 bankruptcy petition, Applicant tried to work with a debt consolidation company. That was not useful because the consolidated debts did not include all of his debts. He self-reported his financial difficulties to his security officer before filing for bankruptcy relief in October 2019. It turned out that the Chapter 13 monthly payment plan amount was more that he could afford. He had to develop a new alternative to be able to continue living in his home and pay his bills. With the issuance of the SOR in October 2023, his financial problems became a threat to his ability to retain his security clearance. (Tr. at 25-30, 32-36, 88, 98; AE J.)

Working with a mortgage broker, Applicant learned that he could refinance his home mortgage and borrow a substantial amount of his equity in his home. In March 2024 he closed on a new mortgage in the amount of \$766,500, based upon a home appraisal of \$1,200,000. His new monthly payments, including taxes and insurance are \$6,200. His new interest rate is 6.625 percent. After paying off the former mortgage and financing expenses, the net payout to Applicant was about \$120,000. He has used that money to pay his back taxes and to fund his settlements with eight of his nine consumer creditors. He has about \$45,000 remaining. He has put \$20,000 of those funds in an emergency account. He will use part of the remainder of the loan proceeds to pay the only unresolved debt alleged in SOR, ¶ 1.h., and any taxes he owes for TY 2023. (Tr. at 61-72, 99-100.)

After the hearing, Applicant provided a budget, which reflects that his net monthly income is \$12,442. His budget shows monthly expenses of \$3,800, a mortgage expense of \$6,252, and a net monthly remainder of \$2,390. Without any consumer debts to pay, Applicant believes he can afford the larger mortgage payment and pay his taxes through withholding as well as his family's living expenses. (AE HH.)

Applicant recently took an online financial counseling course that he found to be very helpful. The counseling assisted him in planning to pay his taxes and to save money in an emergency fund. He uses an online IRS tax calculation website to help him determine how much taxes he must withhold from every paycheck to cover his annual taxes. He and his wife have prepared a budget, which they use to guide their spending. He intends to refinance his new mortgage with a lower monthly payment when interest rates decline and his credit score improves without any consumer debt. (Tr. at 58-62, 78; AE V.)

Whole-Person Evidence

Applicant submitted three character-reference letters from work colleagues. One of his co-workers has known Applicant since 2008 when they were both students. All of the references praise Applicant's honesty and integrity. They are aware of his financial struggles as the sole income earner supporting a family of five in an area with high housing costs. They praise his dedication to provide for his family while actively seeking to resolve his debts. They also note his integrity by reporting his financial problems to his security officer. (AE M, AE N; AE O.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants national security eligibility. Decisions include, by necessity, consideration of the possible risk the

applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes four conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The record evidence supports all of the above potentially disqualifying conditions. Accordingly, the burden shifts to Applicant to mitigate security concerns under Guideline F.

The guideline includes seven conditions in AG ¶ 20 that can mitigate security concerns under this guideline. The following five conditions have possible application to the facts of this case.

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant has established mitigation under all five conditions. Applicant's financial problems arose in the 2016-to-2018 time period. He incurred extraordinary expenses caring for his wife and child's medical conditions. His income was insufficient to pay these expenses, which were beyond his control, and the rest of his family's living expenses. He had to borrow money and use credit on his credit cards to keep up with his expenses. These conditions continued in what he described as a snowball rolling down a hill. He tried to resolve his difficulties first with debt consolidation, and then with a Chapter 13 bankruptcy payment plan. Neither approach provided a workable solution. With counseling he found a way to borrow against the substantial equity he had in his residence and used the funds to pay off his consumer debts. Also, he negotiated a short-term payment plan with the IRS to pay his delinquent taxes, and he repaid all of his tax debts about three months early. Applicant has acted responsibly under the circumstances. His past behavior is unlikely to recur. He is determined not to let his expenses get ahead of his income. Moreover, Applicant's past financial struggles do not cast doubt on his current reliability, trustworthiness, and judgment, especially in light of his history of self-reporting

his financial difficulties in 2009 and again in 2019. AG ¶¶ 20 (a), (b), (d) and (g) have been fully established.

Applicant has taken two online financial counseling courses and now has a serious budget. He and his wife plan to conduct his financial affairs in a manner consistent with his budget. Applicant has substantial funds in the bank for emergencies and other expenses. His budget reflects a significant net remainder every month that will ensure that he does not need to rely on credit to pay any extraordinary future expenses. He has no intention of ever using credit again to finance his family's medical needs and lifestyle. Without any tax or consumer debts, Applicant can afford to pay his new, more expensive mortgage and provide for his family and their medical care. There are clear indications that his financial problems are resolved and will not be repeated. AG ¶ 20 (c) has been fully established.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have given significant weight to Applicant's military career and the medical reasons that resulted in his premature discharge. I have also weighed the strong endorsement provided by Applicant's character references. Their opinion of Applicant is entirely consistent of my impression of his character as evidenced by his testimony. At first blush, Applicant's downward financial spiral after he purchased a home in 2016 for his family of five gave rise to a very heavy burden to mitigate his actions. However, when the evidence is viewed in its entirety, Applicant has satisfied that heavy burden and has established that he is deserving of the privilege of having his security clearance continued so that he can serve our national defense working as a contractor. Overall, the record evidence leaves me without any questions or doubts as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.p: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

JOHN BAYARD GLENDON
Administrative Judge